Supreme Court, U.S.
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No. _____

IN THE
Supreme Court of the United States

RAYMON BLEDSOE SR.

Petitioner,

v.

NUCOR YAMATO STEEL COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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January 28, 2002

7688

QUESTIONS PRESENTED

Whether the Lower Courts holding on summary judgement conflicts with this Court and, *Anderson v. Liberty Lobby Inc.*

Whether the Eight Circuits holding conflicts with the Congressional intent of the statutory scheme of the EEOC and Title VII of the Civil Rights Act of 1964.

Whether the Eight Circuits holding conflicts with this Courts interpretation of the 180 day limitations period for filing a charge.

Whether the Eighth Circuits holding on the 180 day limitations period conflicts with this Court and decisions of the Eighth Circuit as it relates to the doctrine of stare decisis.

Whether the Eighth Circuits holding on equitable tolling creates a Constitutional question as it relates to the Fourteenth Amendment and equal access to the law.

Whether the Eighth Circuits holding on Arkansas State Law claims conflict with this Court , the Arkansas Supreme Court and Arkansas Law.

PARTIES TO THE PROCEEDING

The petitioner in this case is Raymon Bledsoe Sr.

The respondent is Nucor Yamato Steel Company.

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PETITION FOR A WRIT OF CERTIORARI

Raymon Bledsoe Sr., respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The Order granting Summary Judgement of the United States District Court for the Eastern District of Arkansas Western Division is unreported.[1]

The decision of the Court of Appeals opinion is reported at 2001 WL 987540 (8th Cir.(Ark)).[2]

The Order denying Reconsideration and Rehearing En Banc is unreported.[3]

JURISDICTION

The judgement of the court of appeals was entered on August 30, 2001, and a timely petition for rehearing was denied on October 30, 2001. This Court's jurisdiction rests on 28 U. S. C. § 1254(1).[4]

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

The Civil Rights Clause provides that:

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1. See Appendix A at 1a through 8a.

2. See Appendix B at 9a through 14a.

3. See Appendix D at 21a.

4. See Appendix E at 22a through 23a.

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const., Amendment XIV, Sec. 1. The enforcement provisions of the EEOC provides in relevant part that;

> (e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system.
> (f) jurisdiction and venue of the United States courts
> 42 U. S. C. § 2000e-5(e) and (f)[5]

STATEMENT OF THE CASE

This is a job discrimination employment case as it relates to 42 U.S.C. § 2000e and Title VII of the Civil Rights Act of 1964 with discrimination so extensive that a claim of vicarious liability under the doctrine of respondeat superior for tort of outrage was entered. The petitioner, Raymon Bledsoe Sr. who is black was employed by the respondent Nucor Yamato Steel Company from June of 1992 until July of 1998.

During the course of his employment, petitioner experienced numerous unlawful employment practices as it relates to the *EEOC Compliance Manual* and Title VII of the

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5. See Appendix F at 24a.

Civil Rights Act of 1964.[6] The unlawful employment acts of respondent were supported by documented personal diary notes of petitioner and certified letters from petitioner to respondent during the course of his employment. Psychological evaluations from respondent's company psychologist gave even more to support petitioners state of mind as it relates to discrimination during the course of his employment. Complaints from petitioner were met with retaliation. The last act took the form of discharge by respondent when petitioner prior to termination, requested that he be allowed to exercise the final step of respondent's company complaint procedure.[7]

After discharge, petitioner proceeded to file a charge of discrimination against respondent which was delayed by the administrative dereliction of the EEOC. Petitioner filed suit in U. S. District Court for the Eastern District of Arkansas, Jonesboro Division which entered summary judgement in favor of respondent. The District Courts ruling regarding the doctrine of equitable tolling conflicted with relevant cases of this Court and the Eighth Circuits. Petitioner appealed the District Courts decision to the Eighth Circuit Court of Appeals which ruling affirmed the District Courts ruling.

Petitioner filed for petition for rehearing en banc and petition for rehearing by the panel stating that the Eighth Circuits ruling would allow the EEOC to circumvent the administrative responsibilities delegated to it by Congress and that such abuses of the EEOC speak to the Public

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6. See Appendix J at 35a through 47a and Appendix O at 94a through 101a.

7. See Appendix G at 29a.

Interest.[8] The petition for rehearing en banc and the petition for rehearing by the panel were denied without remarks.

The decisions below rest on erroneous views which are in conflict with and contravene the Congressional intent of 42 U.S.C. §2000e-5(e) and (f) as it relates to this Courts interpretation of the 180 day "limitations period" in *Zipps v. Transworld Airlines, Inc.*, 455 U.S. 385, 393, 102 S. Ct. 1127, 1132-33 71 L. Ed. 2d. 234 (8th Cir. 1982) and other relevant Eighth Circuit decisions which have followed. The Eighth Circuits ruling in this instance throws the law governing equitable tolling into complete confusion and it is critically important for the Courts and litigants to know whether the Eighth Circuits decision is right or wrong as it raises important questions of law warranting this Court's plenary review or summary reversal for discovery and trial.

BACKGROUND

1. *Nucor Yamato Steel Company and Mr. Bledsoe.* In June of 1992, Mr. Raymon Bledsoe Sr. began his 6(six) year employment with Nucor Yamato Steel Company.

During the six year employment with Nucor Yamato Steel company, Mr. Bledsoe acknowledged to Plant Manager Dan DiMicco his desire for a management position. Annual and sometimes semiannual meetings requested by Mr. Bledsoe with Mr. DiMicco were conducted to reaffirm his desire for a management position and to see how he measured up. However, Mr. Bledsoe's quest to rise from his position as second helper on the furnaces was met by numerous adverse actions as it relates to testing in the promotion process and ultimately wrongful termination. In

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8. See Appendix C at 18a through 19a.

spite of the discriminatory actions of employees of Nucor Yamato Steel Company, Mr. Bledsoe made substantial contributions to the operations of the company.

However, on July 02, 1998, Mr. Bledsoe was terminated from his employment with Nucor Yamato Steel Company by Melt Shop Manager-Mike Gurley. The Nucor Yamato Steel Company had received certified letter #280 309 912 from Mr. Bledsoe addressed to Mr. Gurley on June 30, 1998 [9] which referenced harassment and other discriminatory actions by employees of Nucor Yamato Steel Company.

In terminating Mr. Bledsoe, Nucor Yamato Steel Company violated the fourth step of its company complaint procedure which allows employees to submit matters regarding misunderstandings or complaints concerning work conditions, procedures, policies or anything relative to work to the President of the Company.[10] Mr. Bledsoe's termination also limited access to the internal grievance procedure of Nucor Yamato Steel Company. It is clear that Mr. Bledsoe was engaged in protected activity as it relates to 42 U.S.C. § 2000e-3(a) and that Nucor Yamato Steel Company not only violated its company complaint procedure but in an adverse action, also retaliated against Mr. Bledsoe for his engagement in the protected activity.

This violation of the company complaint procedure does not represent an isolated incident and nor does the discriminatory actions of Mike Gurley as a department manager, as Mr. Bledsoe also experienced discrimination from the 2 (two) predecessors of Mr. Gurley, John Beaton and

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9. See Appendix G.

10. See Appendix J at 44a through 45a.

John Bell[11] whose actions represent a pattern of discrimination which is a claim of Mr. Bledsoe's in his First Amended Complaint.

The lack of diligence on the part of Nucor Yamato Steel Company to respond to or correct harassment by supervisor Glenn Wayne Brown which was complained of by Mr. Bledsoe created a hostile working environment so extreme that it caused Mr. Bledsoe to experience emotional distress and an injured shoulder.

On July 02, 1998, Nucor Yamato Steel Company terminated Mr. Bledsoe rather than correct or prevent the adverse employment actions that he complained of.

2. *The Equal Employment OpportunityCommission (E.E.O.C.) and Mr. Bledsoe.* On August 6, 1998, Mr. Bledsoe contacted the Little Rock office of the E.E.O.C. Mr. Bledsoe completed the charge information form and returned to the Little Rock E.E.O.C which transferred the case to the Memphis, TN. office. The Memphis office contacted Mr. Bledsoe by letter requesting time for an interview.

On September 15, 1998, Mr. Bledsoe contacted the Memphis office by telephone and after a 10 minute conversation with investigator Christine Wilson, she indicated that based upon the information provided the E.E.O.C. would not represent him in legal proceedings against Nucor Yamato Steel Company.

Dissatisfied with the telephone interview, Mr. Bledsoe mailed letter to the Little Rock office of the E.E.O.C. on

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11. See Appendix J at 35a through 37a.

October 27, 1998[12] requesting information regarding findings from the E.E.O.C. that would allow him to seek the necessary avenues to litigate the case and a request for reconsideration. The Little Rock office received the letter from Mr. Bledsoe on October 28, 1998, 60(sixty) days prior to the 180 day limitation for filing a charge which expired on December 29, 1998.

Since the Little Rock office of the E.E.O.C. had not responded to the first element of his request, Mr. Bledsoe believed that the E.E.O.C was addressing the second element which was reconsideration. However, it was not until after Mr. Bledsoe mailed a second letter on January 29, 1999[13] relating back by referencing the October 28, 1998 letter and the elements of it and the Little Rock office of the E.E.O.C. responded by mailing charge information Form 5 on February 5, 1999. Mr. Bledsoe proceeded to file a charge of discrimination of March 8, 1999.

Concerned about the dereliction and inconsistencies of both E.E.O.C. offices in its failure to properly investigate his claims, on June 01, 1999, Mr. Bledsoe with the use of the *E.E.O.C. Compliance Manual* presented credible information in support of his claims of discrimination against Nucor Yamato Steel Company.[14]

In defiance and considering the June 1, 1999 as request for reconsideration, Ms. Kay Klugh, the Area Director of the Little Rock office, response was that she would not reconsider

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12. See Appendix H at 32a.

13. See Appendix I.

14. See Appendix J.

the issuance of the Notice of Right to Sue[15] as she tried to mislead Mr. Bledsoe into believing that he had missed the 90(ninety) day deadline to file suit.

Mr. Bledsoe's final correspondence with the E.E.O.C. was by letter dated June 14, 1999 correcting Ms. Klugh on the miscalculation on the filing deadline and other occurrences which led Mr. Bledsoe to believe that an obstruction of justice had been committed by the E.E.O.C.[16]

3. *The District Court Proceeding.* Mr. Bledsoe filed his initial complaint of discrimination against Nucor Yamato Steel Company on June 03, 1999 in the United States District Court Eastern District of Arkansas, Jonesboro Division on a file form provided by the court entitle Complaint Under Title VII of the Civil Rights Act of 1964. A motion for leave to file amended complaint, stating damages, specified amounts for relief and included agents or employees of Nucor Yamato Steel Company under the theory of respondeat superior was filed on November 19, 1999 . The District Court Order on December 09, 1999 granted Mr. Bledsoe's leave to filed to file amended complaint with no objections from Nucor Yamato Steel Company. Nucor Yamato Steel Company later filed an objection to the amended complaint on December 20, 1999. Mr. Bledsoe filed additional motions for leave to file second amended complaint for regarding Arkansas State Law claims for 1) joint tortfeasors 2) retaliation 3)suppression and spoilation of evidence and additional monetary damages for defamation of character all of which were denied by the District court.

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15. See Appendix K.

16. See Appendix L.

On September 11, 2000, Mr. Bledsoe filed a motion to compel Nucor Yamato Steel Company to comply with discovery.[17] September 12, 2000, Nucor Yamato Steel Company entered motion for summary judgement. Mr. Bledsoe, without the benefit of discovery, filed objection to summary judgement on September 29, 2000[18] challenging the elements the summary judgement citing relevant evidence, the *E.E.O.C Compliance Manual*, Arkansas Case Law, Arkansas Supreme Court decision, Eighth Circuit and relative decisions from other circuits, federal statutes and relevant decisions of this Court. Contrary to the Eighth Circuits statement of a "full hearing" there was none.

The district court granted Nucor Yamato Steel Company's motion for summary judgement on October 23, 2000 finding Mr. Bledsoe's motion to compel moot. The district court judge cited *Anderson v. Unisys Corp.*, 47 F. 3d 302, 306 (8th Cir.), *cert. denied*, 516 U.S. 913 (1995) as a basis for his denial of equitable tolling in Mr. Bledsoe's case misapplying the Eighth Circuits decision on equitable tolling.

4. *The Court of Appeals' Decision.* On November 21, 2000, Mr. Bledsoe filed a notice of appeal to the Eighth Circuit Court of Appeals from District court stating 5(five) issues in which the District court was in error. Mr. Bledsoe filed appellant brief challenging the summary judgement ruling of the district court. Nucor Yamato Steel Company filed its appellee brief and Mr. Bledsoe responded by filing a reply brief.

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17. Discovery was delayed by Nucor Yamato Steel Company for 8 months. See Appendix M at 58a and Appendix N at 71a.

18. See Appendix O.

The Eighth Circuit affirmed the district courts opinion citing *DeBrunner v. Midway Equip. Co.*, 803 F. 2d 950, 952 (8th Cir. 1986) and *Shempert v. Harwick*, 151 F. 3d 793, 797 (8th Cir. 1998) *cert. denied*, 525 U.S. 1139 (1999) (citation omitted) which Mr. Bledsoe stated in his petition for rehearing,[19] have no direct application to his case which brings the before this Court the question as to whether the Eighth Circuit properly applied the doctrine of *stare decisis* in this instant.

In his petition for rehearing which was timely filed on September 11, 2001, Mr. Bledsoe also cited the Eighth Circuit precedent *Anderson v. Unisys Corp.*, 47 F. 3d 302, 306 (8th Cir. 1995) as a case that directly applied to his case regarding equitable tolling.

Mr. Bledsoe went on to state that the Eighth Circuits ruling raised a questions of exceptional importance regarding equitable tolling, Congressional intent as it relates to the E.E.O.C. and summary judgement ruling in civil rights actions.[20] The petition for rehearing was denied on October 30, 2001without comment.

REASONS FOR GRANTING THE WRIT

Nucor Yamato Steel Company attempted to prevent Mr. Bledsoe from exercising his Fourteenth Amendment right of "equal access" to the Courts by contravening case law and regulatory statutes regarding equitable tolling in this instant. In spite of the evidence presented by petitioner, Nucor Yamato Steel Company has maintained that the Equal Employment Opportunity Commission (EEOC) is not

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19. See Appendix C at 15a through 17a.

20. See Appendix C at 18a through 19a.

responsible for lulling Mr. Bledsoe into inactivity by missing the 180 day deadline for filing a charge of discrimination. However, the real tragedy in this case is that Nucor Yamato Steel Company has known since the beginning of this litigation that "the EEOC failed to comply with its statutory duty to investigate and attempt to resolve the allegations in accordance with Title VII of the Civil Rights Act of 1964, as amended."[21]

The Eighth Circuit has held in this instant that it is permissible for the EEOC not to respond to claimants requests for reconsideration of their claims of discrimination.

This holding if allowed to stand would completely circumvent the Congressional intent of the EEOC in its responsibilities to resolve issues of discrimination. This decision is flatly inconsistent with Eighth Circuit precedents concerning equitable tolling which relate to this case. It is squarely in conflict with this Courts interpretation of the 180 day filing period as a statute of limitations and the spirit of the doctrine of equitable tolling.

If permitted to stand, the Eighth Circuits ruling in this instant, would prevent future claimants from having their day in court. This decision would have an even more devastating affect in states such as Arkansas where the EEOC is the only avenue to administer federal issues of discrimination. Claimants such as petitioner would be not only be wronged once by their employer for discrimination but also wronged twice by the federal agency whose assigned task is that of investigating claimants charges of discrimination presenting a Constitutional question of great importance.

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21. See Appendix P at 110a to 111a.

The improper adjudication of claims presented to the Eight Circuit is the final reason why this writ should be granted.

I.

THE LOWER COURTS HOLDING ON SUMMARY JUDGEMENT CONFLICTS WITH THIS COURT AND *ANDERSON v. LIBERTY LOBBY, INC.*

The district court entered summary judgement in favor of Nucor Yamato Steel Company basing its standard for summary judgement upon the Supreme Court established guidelines of *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)[22] to assist it in determining whether the standards for summary judgement had been met. The threshold inquiry is utilized in determining whether there is a need for trial. However, when one examines the direct evidence presented to the district court as it relates to the administrative dereliction of the EEOC as well as the elements of *Anderson*, 477 U.S. 242, upon which this Court based the inquiry threshold, the district courts ruling for summary judgement fails. The threshold is based upon the following elements;

> 1. "Summary judgement will not lie if the dispute about a fact is "genuine," i.e., if the evidence is that a reasonable jury could find a verdict for the nonmoving party."
>
> 2. "Credibility determinations, weighing of evidence, and drawing of legitimate inferences from the facts

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22. See Appendix A at 3a through 4a.

are jury functions, not those of a judge,[23] whether his ruling is on motion for summary judgement or for directed verdict; evidence of the nonmovant is to be believed and all justifiable inferences[24] are to be drawn in his favor. Fed. Civil. Proc. Rule 50(a)56(c), 28 U.S.C.A

3. "Plaintiff must present affirmative evidence in order to defeat a properly supported motion for summary judgement, even where the evidence is likely to be within the possession of the defendant, as long as plaintiff has had a full opportunity to conduct discovery. Fed. Rules Civ. Proc. Rule 56 (c), 28 U.S.C.A.

The reexamination of relevant direct evidence will demonstrate that the district court did not meet the criteria set fourth in elements (1) and (2). The district court also failed element (3) when it stayed Mr. Bledsoe's motion to compel discovery as *Stanback v. Best Diversified Product, Inc.*, 180 F. 3d. 903 (8th Cir. 1999) which states "although discovery does not have to be completed before Court can grant summary judgement, summary judgement is proper only after nonmovant has had adequate time to engage in discovery.

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23. Rule 56(a)-(c) was cited in Mr. Bledsoe's Opposition to Motion for Final Summary Judgement. See Appendix O at 78a.

24. The District Court was presented with cases from the Eight Circuit Court of Appeals that caution against summary judgement in civil right pleadings and employment discrimination cases citing cases from this court such as *Adickes v. U. S. H. Kress Co.* 398 U. S. 144, 153-59, 90 U. S. Ct. 1598, 26 L. Ed. 2d 142 (1970) and *United States v. Diebold, Inc.*, 369 U. S. Ct. 993, 8 L. Ed 2d 176 (1962). See Appendix O at 76a through 78a. Inferences of administrative dereliction are drawn from the time line of events and correspondence between Mr. Bledsoe and the EEOC prior to him filing suit in the District Court. See Appendix O at 78a through 86a.

Fed. Rules Civ. Proc. Rule 56."

The Eighth Circuit cited Eighth Circuit cases *Hawkeye Nat'l Life Ins. Co. v. AVIS Indus. Corp.*, 122 F. 3d 490, 496 (8th Cir. 1997); *Donaho v. FMC Corp.*, 74 F. 3d 894, 897-98 (8th Cir. 1996); and *Gundacker v. Unisys Corp.*, 151 F. 3d 842, 846 (8th Cir. 1998) as it affirmed the district courts decision for summary judgement. However, the doctrine of *stare decisis* states that a Court of Appeals is bound by the decisions of the Supreme Court. It is to that end that evidence will demonstrate that the lower courts rulings of summary judgement for Nucor Yamato Steel Company cannot "lie" supporting the fact that this case should be summarily reversed for discovery and trial. It is to this Courts interpretation of the statutory scheme of the EEOC that we now turn.

II.

THE DECISIONS BELOW CONFLICT WITH THE CONGRESSIONAL INTENT AND THE STATUTORY SCHEME OF THE EEOC AS IT RELATES TO TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.

It is well established within this Court that as a federal agency, the EEOC has been given wide latitude by Congress to enforce charges of discrimination as it relates to Title VII of the Civil Rights Act of 1964 and its 1972 amendments.[25]

The crux of this case lies with the October 27, 1998 letter[26] from Mr. Bledsoe to the EEOC which language clearly

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25. See Appendix O at 82a through 85a.

26. See Appendix H at 32a and Appendix O at 80a and 81a

states that he was requesting finality from the EEOC so that he could litigate his case and reconsideration of his case. It is undisputed by Nucor Yamato Steel Company that the letter was received on October 28, 1998 by the EEOC 60 days prior to the 180 day limitations period to file a charge of discrimination.

It also undisputed that the EEOC did not respond to Mr. Bledsoe's request until 30 days after the expiration period as Mr. Bledsoe was "lulled" into believing that the EEOC was considering the second element of his request which was reconsideration. These facts were presented to both courts below. In his request for rehearing en banc to the Eighth Circuit which was denied, Mr. Bledsoe stated that "During the course of this litigation Appellee-Nucor Yamato Steel Company nor the Courts have cited any cases or statutes that support or justify the administrative negligence of the EEOC as it relates to the above-entitled cause therefore the preliminary opinion must be reversed."[27]

While Nucor Yamato Steel Company has presented the argument of negligence on the part of Mr. Bledsoe, it has failed to adduce any relevant evidence in support of the 90 day period of inactivity by the EEOC.

To the contrary, Nucor Yamato Steel Company used as an affirmative defense to Mr. Bledsoe's first amended complaint the fact that the "EEOC failed to comply with its statutory duty to investigate and resolve the allegations." [28]

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27. See Appendix C at 17a.

28. See Appendix P. The fact that the EEOC did not conduct a proper investigation was addressed extensively by Mr. Bledsoe in his June 1, 1999 letter to the Little Rock EEOC prior to filing suit in Federal District Court. See Appendix J at 47a through 50a.

This gives even more weight to Mr. Bledsoe's claim of administrative dereliction by the EEOC.

Lull is defined as "1. a period of less noise or violence; brief calm. 2. *Figurative*. a period of reduced activity. To understand lull in this instant, the court should have looked to the evidence in the time line of events presented in Mr. Bledsoe's objection to motion for summary judgement.

The time line of events[29] clearly demonstrate that Mr. Bledsoe diligently pursued his claim until October 27, 1998 when he experienced that period of reduced activity as he waited for the EEOC to respond to his request. The court should have also looked to Mr. Bledsoe's diligence after January 29, 1999[30] when the EEOC responded to his second letter which referenced the October 27th letter.

The Eighth Circuit affirmed the district courts ruling regarding summary judgement but its ruling actually speaks to the fact that Mr. Bledsoe was lulled into inactivity when it stated that "it is unfortunate that he waited to hear from the EEOC before taking further action"[31] and the district court as it stated "it was his impression that the Little Rock office of the EEOC had reconsidered the information submitted by Plaintiff and was conducting an investigation."[32]It is clear that the district and the Eighth Circuit failed as the courts did not satisfy elements (1) and (2) of the threshold requirements of *Anderson v. Liberty Lobby, Inc.*, 477 U.S.242, 250 (1986).

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29. See Appendix O at 79a through 81a.

30. See Appendix I.

31. See Appendix B at 12a.

32. See Appendix A at 3a and 5a through 6a.

If the lower courts had applied Fed.Evid.R. 401 which relates to relevant evidence and the Reasonable Man Standard in determining its admissibility, this case would not be before this Court.

Needless to say, the Courts nor Nucor Yamato Steel Company adduced any statutes or case law that support the EEOC's negligence because there are none.[33] In this instant, it is clear that the EEOC violated the Congressional intent for it to enforce the discriminatory acts of Nucor Yamato Steel Company.

It is clear that Mr. Bledsoe was mislead by the EEOC and that the period for filing a charge against Nucor Yamato Steel Company should be equitably tolled and that the lower courts holding should not be allowed to stand. It is to this Courts interpretation of the 180 day limitations period that we now turn.

III.

THE EIGHTH CIRCUIT'S DECISION CONFLICTS WITH THIS COURTS INTERPRETATION OF THE CONGRESSIONAL INTENT OF THE 180 DAY LIMITATIONS PERIOD FOR FILING CHARGE AS IT RELATES TO *ZIPPS v. TRANSWORLD AIRLINES, INC.*

The doctrine of equitable tolling is appropriate only

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33. Even though the June 11, 1999 letter from the Little Rock Area EEOC Area Director was misleading regarding the time to file suit in Federal District Court, it does imply that the EEOC could reconsider a determination as late as the 90 day deadline for filing suit. See Appendix K. The Little Rock EEOC Area Director was corrected regarding the 90 day deadline by Mr. Bledsoe in his June 14, 1999 letter to the EEOC. See Appendix L.

the circumstances that cause a Plaintiff to miss a filing deadline are out of his hand as it relates to *Zipps v. Transworld Airlines, Inc.*, 455 U.S. 385, 393, 102 S. Ct. 1127, 1132-33, 71 L. Ed. 2d 234 (8th Cir. 1982) and *Hill v. John Chezik Imports*, 829 2d. 112, 1124 (8th Cir. 1989). Equitable tolling arises upon some positive misconduct by the party against whom it is asserted, *De Brunner v. Midway Equipt. Co.*, 803, F. 2d 950, 952 (8th Cir. 1986). *Melendez v. Singer-Finden*, 529 F. 2d. 321, 323-24 (10th Cir. 1976), equitable tolling is warranted where matters, beyond plaintiff's control are at work such as administrative delay or dereliction.

Evidence has been presented which support the fact that the EEOC was derelict in this instant causing Mr. Bledsoe to miss the 180 day filing deadline.

The Eighth Circuit's decision regarding equitable tolling fundamentally misinterprets this Courts interpretation of the 180 day limitations period to file a charge as it relates to *Zipps*, 455 U.S. 385 (citation omitted), as this Court held that "the statutory time provision for filing with the EEOC Title VII claim against a private employer is not a jurisdictional prerequisite to suite in federal court, but instead subject to waiver, estoppel, and equitable tolling." To lend further support for its interpretation, this Court cited *Electrical Workers v. Robbins & Myers, Inc.*, 429 U.S. 229, 97 S. Ct. 441, 50 L. Ed 2d. 427 (1976), where this Court stated that "we also hold that the 180 day "limitations period" enacted by the 1972 Amendments, was not jurisdictional." In reaching this conclusion, this Court cited *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 316, 65 S. Ct. 1137, 1142-1143, 89 L. Ed. 1628 (1945), stating that " Certainly it cannot be said that lifting the bar of a statute of limitation so as to restore a remedy lost through mere lapse of time per se an offense against the Fourteenth Amendment."

The Eighth Circuit cited 42 U.S.C. §2000e-5(1) which it believes that Title VII requires a claimant to file an administrative charge with the EEOC with 180 days of the alleged discriminatory conduct. However, this Court held in *Zipps*, 455 U.S. 385 (citation omitted) that,

> "the provision granting district courts jurisdiction under Title VII, 42 U.S.C. §2000e-5(e) and (f) does not limit jurisdiction to those cases in which there has been a timely filing with the EEOC. It contains no reference the timely filing requirement. The provision specifying the time for filing charges with the EEOC appears as an entirely separate provision, and it does not speak in jurisdictional terms or refer in any way to the jurisdiction of district courts. The legislative history of the filing provision is sparse, but Senator Humphrey did characterize the time period for filing a claim as a "period of limitations," 110 Cong. Rec. 12723 (1964), and Senator Case described its purpose as preventing the pressing of "stale" claims, id., at 7243, the end served by a statute of limitations."

In *Rivers v. Roadway Express* (1994, US) 128 L. Ed 2d 274, 114 S. Ct. 1510, 64 BNA FEP Cas 842, 64 CCH EPD ¶42948 this Court ruled that "It is the Supreme Court's responsibility to say what a federal statute means, and once the Supreme Court has spoken, it is the duty of the other courts to respect that understanding of the governing rule of law." For this cause alone, the Eighth Circuits ruling should not be given binding affect. However we now turn to the Eighth Circuits error of not following the above precedent as well as precedents of the Eighth Circuit which are relative to this instant.

IV.

THE EIGHTH CIRCUITS DECISION ON THE 180 DAY LIMITATIONS CONFLICTS WITH THIS COURT AND RELEVANT DECISIONS OF THE EIGHTH CIRCUIT AS IT RELATES TO THE DOCTRINE OF *STARE DECISIS.*

It is clear that the EEOC was administratively derelict in lulling Mr. Bledsoe into believing that the EEOC was addressing his request(s) and it is also clear that Eighth Circuits holding on the 180 day filing period is in direct conflict with this Courts interpretation of the filing period.

It is even more apparent that the case law used by the Eighth Circuit to render its opinion were not relevant to this instant regarding the doctrine of equitable tolling. Mr. Bledsoe addressed this issue at length in his reply brief as well as his request for rehearing in banc to the Eighth Circuit.

As an appellate court, the Eighth Circuit must determine the rights of the parties before it in accordance with principle established by law, *United States v. Union P. R. Co.* 98 U.S. 569, 25 L. d 143. In the area of case law, the courts follow the rule of stare decisis, which provides that a determination of a point of law by a court will generally be followed by a court of the same or lower rank if a subsequent case presents the same legal problem, 20 *Am. Jur.* 2d, *Courts* §183.

Stare decisis promotes the evenhanded, predictable, and consistent development of legal principles; fosters reliance on judicial decision; and contributes to the actual and perceived integrity of the judicial process, *Payne v. Tennessee* 115 L. Ed. 2d. 720, 111 S. Ct. 2597, reh den (U.S.) 115 L. Ed. 2d. 1110, 112 S. Ct. 28 (1991, U.S.). Accordingly, in deciding

a case, the Supreme Court is bound to examine its precedents, *De Bearn v. Safe Deposit & Trust Co.* 233 U.S. 24, 58 L. Ed. 883, 34 S. Ct. 584 (1914). The Court of Appeals is bound by the decisions of the Supreme Court until such time as the Supreme Court informs it that the rule of decision has changed, *Pope v. United States*, 298 F2d 507; *United States ex rel. Fein v. Deegan*, 410 F2d 13, cert. den. 395 U.S. 935, 23 L. Ed. 2d. 450, 89 S. Ct. 1997 (1969, C.A. 2 NY).

The Eighth Circuit is therefor bound in this instant by *Zipps v. Transworld Airlines, Inc.*, 455 U.S. 385(citation omitted).

The appellate court is also bound by prior decisions of its own circuit, *United States v. Cooper*, 462 F2d. 1343, cert. den. 409 U.S. 1009, 34 L. Ed. 2d. 303, 93 S. Ct. 452 (1972, C.A. 5 Fla.). The Eighth Circuit affirmed the district courts ruling for summary judgement citing *Shempert v. Harwick*, 151 F. 3d 793, 797 (8th Cir. 1998), cert. denied, 525 U.S. 1139 (1999) and *De Brunner v. Midway Equip. Co.*, 803 F. 2d 950, 952 (8th Cir. 1986) as cases in support of its affirmation which did not present the same legal problem as Mr. Bledsoe's case which was referenced in Mr. Bledsoe's petition for rehearing en banc.[34] *Anderson v. Unisys Corp.*, 47 F. 3d 302, 306 (8th Cir. 1995) which was cited by *Shempert*, 151 F. 3d 793 (citation omitted) was cited by Mr. Bledsoe in his petition for rehearing en banc as case law which presented the same legal problem. However, the petition for rehearing en banc was denied without comments.

Anderson, 47 f. 3d 302 (citation omitted) states "Other

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34. See Appendix C at 15a through 16a. Concerns regarding the misapplication of case law were also expressed by Mr. Bledsoe to the Eighth Circuit Court of Appeals in his Appellants Reply Brief.

circuits, as well as our own, have held that when an administrative agency misleads a complainant, particularly one who is without the benefit of counsel, equitable tolling may be justified., *citing Warren v. Department of Army*, 867 F. 2d. 1156-61 (8th Cir. 1989); *Early v. Banks Life and Casualty Co.*, 959 F. 2d. 75, 81 (7th Cir. 1992); *Bloomberg v. HCA Management Co.*, 858 F. 2d 642, 644 (5th Cir. 1988); and *Martinez v. Orr*, 738 F. 2d 1107, 1111-12 (10th Cir. 1984), where equitable tolling was granted in each case due to misleading conduct of the EEOC. *Martinez* like Mr. Bledsoe was lulled into believing that the EEOC was reconsidering its decision.

Warren v. Department of Army, 867 F. 2d 1156 (citation omitted) is another Eighth Circuit precedent which present the same legal problem as this instant. Like Mr. Bledsoe's case, it speaks to the diligence of the plaintiff. The court stated "Importantly, this is not a case where plaintiff needlessly delayed instituting an action. Instead, the record reveals that Warren acted with "utmost diligence," only to find himself caught up in an arcane procedural snare."[35]

In applying the doctrine of *stare decisis*, it is apparent that the Eighth Circuit was in error in affirming the decision of the district court of summary judgement for Nucor Yamato

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35. See *Warren v. Department of Army*, 867 F. 2d. 1156, 1160-61(8th Cir. 1989) *citing Thomas v. KATV Channel 7*, 692 F. 2d 548, 549-50 (8th Cir. 1982) (per curiam) cert. denied 460 U. S. 1039, 103 S. Ct. 1431, 75 L. Ed. 2d 790 (1983), We have previously indicated that because the remedial character of Title VII, the filing period 42 U.S.C. § 2000e-5(f)(1) is more akin to a statute of limitations than a jurisdictional prerequisite. *Martinez v. Orr*, 738 F. 2d 1107, 1111-12 (10th Cir. 1984), tolling limitation period where plaintiff was lulled into inaction by EEOC. *Bobby v. Dean*, 821 F. 2d 346, 349-50 (6th Cir. 1987); *Hornsby v. United States Postal Service*, 787 F. 2d 860, 862 (11th Cir. 1982); *Paulk V. Department of the Air Force, Chanute Air Force Base*, 830 F. 2d 79, 81, 83 (7th Cir. 1987).

Steel Company. For summary judgement is proper only where there is no genuine issue of material fact, so that the dispute may be decided solely on legal grounds as it relates to *Holloway v. Lockhart*, 813 F. 2d 874 (8th Cir. 1987).

V.

THE EIGHTH CIRCUITS DECISION ON EQUITABLE TOLLING IN THIS INSTANT WOULD CREATE A FOURTEENTH AMENDMENT QUESTION

If the Eighth Circuits decision on equitable tolling in this instant is allowed to stand it would create a major Constitutional issue related to the Fourteenth Amendment and equal access to the courts.

If this issue is allowed to stand, it would allow the Eighth Circuit to engraft its own notion of proper procedure upon an agency (EEOC) entrusted with the substantive functions by Congress. This Court has cautioned reviewing courts against such notions. *Vermont Yankee Nuclear Corp., v. National Resources Defense Council Inc.*, 435 U.S. 519, 556, 98 S. Ct. 1197, 55 L. Ed. 2d 460 (1978) ("Court of Appeals has unjustifiably intruded into the administrative process")

It would say to the EEOC that it is not accountable as an administrative agency for its actions in responding to charges of discrimination if and when it decides to respond to those charges.

Allowing this decision to stand would allow the Civil Rights of citizens to be taken away by their employer and a second time by the administrative agency whose task has been assigned by Congress to enforce such violations, denying citizens their right to the "due process" of the law.

The sanctioning of such holding would have a devastating affect in states such as Arkansas where Mr. Bledsoe resides since the EEOC is the only avenue to administer the federal issue of discrimination.[36]

Summarily reversing the judgement of the Eighth Circuit would be appropriate in this instance as it relates to *E. g., Helvering v. Wiese*, 292 U.S. 614, 615, 54 S. Ct. 862, 78 L. Ed. 1473 (1934) (Judgement summarily reversed).

It would also lift the bar of the statute of limitation so as to restore a remedy lost through the mere lapse of time that this Court speaks to in *Chase Securities Corp. v. Donaldson*, 325 U.S. 304, 316, 65 S. Ct. 1137, 1142-43 89 L. ed. 1628 (1945).

Mr. Bledsoe's claims of racial discrimination, harassment and retaliation under 42 U.S.C. § 2000e must therefore be maintained as violations of Title VII of the Civil Rights Act of 1964.

VI.

THE EIGHTH CIRCUIT DECISIONS ON STATE LAW CLAIMS CONFLICT WITH DECISIONS OF THIS COURT, THE ARKANSAS SUPREME COURT AND ARKANSAS LAW.

1. *The Lower Courts Decisions on Tort of Outrage Claims Conflict with Decisions of this Court and Arkansas Law.*

The theory of respondeat superior became a tort claim in Mr. Bledsoe's motion to file first amended complaint. The motion was granted by the district court without objection

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36. See Appendix C at 18a.

from Nucor Yamato Steel Company.

The 4(four) certified letters mailed by Mr. Bledsoe and received by Nucor Yamato Steel Company prior to termination and the psychological evaluations conducted by Nucor Yamato Steel Company psychologist speak to Mr. Bledsoe's claim of emotional distress.[37]

Evidence supports the fact that an hostile environment was also created by supervisors of Nucor Yamato Steel Company which led to the severe shoulder injury to Mr. Bledsoe.[38]

The claims for tort of outrage exceed the criteria set forth in *Hollomon v. Keadle*, 931 S.W. 2d 413, 415 (Ark. 1996) and *M.B.M. Co. v. Counce*, 596 S.W. 2d 681, 687 (Ark. 1980).

It is clear that the hostile environment was fostered by Nucor Yamato Steel Company in that no corrective action was taken as Nucor Yamato Steel Company violated its company complain procedure by not taking prompt action.[39] The Eighth Circuit states that "employer is under duty to take corrective action when complaints to a supervisor of harassment of coworker are made" in *Bailey v. Runyon*, 167 F. 3d 466, 79 BNA FEP Cas. 225 (8th Cir. 1999).

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37. See Appendix G at 29a, Appendix J at 41a and Appendix O at 92a through 94a. Certified letters and psychological evaluations were referenced in Mr. Bledsoe's Appellant Brief to the Eighth Circuit Courts of Appeals and entered as part of the records to Federal District Court as exhibits to Mr. Bledsoe's Opposition to Summary Judgement - Appendix O.

38. See Appendix J at 39a through 41a.

39. See Appendix J at 42a through 46a and Appendix O at 92a through 93a.

This Court in *Feragher v. City of Boca Raton*, 118 S. Ct. 2275 (11th Cir. 1998), Granting certiorari, held that;

> "Employer is subject to vicarious liability under Title VII to a victimized employee for actionable discrimination caused by a supervisor, but employer may raise an affirmative defense that looks to the reasonableness of employers conduct in seeking to prevent and correct harassing conduct and to the reasonableness of employees conduct in seeking to avoid harm."

More humiliation and distress was brought upon Mr. Bledsoe when he requested help to cope with the stress caused by the harassment but was not afforded it.[40]

Since Nucor Yamato Steel Company has not presented to the courts evidence that looks to the prevention or correction of harassment, this Court must summarily reverse the lower courts holding regarding Mr. Bledsoe's claim for tort of outrage in this instant.

2. *The Lower Courts Holding on Defamation and Qualified Privilege Conflict with Decisions of the Arkansas Supreme Court and Arkansas Law.*

Remarks made by supervisors of Nucor Yamato Steel Company exceed qualified privileged for business related communications. Remarks made by supervisor in the presence of Mr. Bledsoe's wife and children that one of Mr. Bledsoe's children did not look like him was not qualified

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40. See Appendix J at 41a.

business related communication.[41]

Remark made by department manager to Mr. Bledsoe's coworker that "I don't care if Raymon is fucking your wife, your are going to get along" if considered business communications was exceeded qualified privilege in that it was an intentional false communication which was publicly spoken that injured not only Mr. Bledsoe's good name but also the good names of coworker and his wife.

Accusation by lawyers during deposition of drug use by Mr. Bledsoe and his children which was supported only by an internet inquiry and no adduced evidence from the 6(six) years of employment and numerous at random drug tests by Nucor Yamato Steel Company nor a police report also exceed qualified privilege business related communications.

Arkansas Supreme Court Justice, Judge J. Hays ruled in *Dillard Department Stores v. Felton*, 634 S. W. 2d 135 (Ark. 1982) and citing *Arkansas Associated Telephone Company v. Blankenship*, 211 Ark. 645, 201 S. W. 2d 1019 (1947) that;

> "we, approved the following language: The protection of the privilege may be lost by manner of its exercise, although the belief in the truth of the charge exists. The privilege does not protect any unnecessary defamation. In order for a communication to be privileged, the party making it must be sure to go no farther than his interest or his duties require. Where the party exceeds his privilege and the communication complained of goes beyond what the occasion demands that it should publish, and is unnecessarily defamatory to plaintiff, he will not be protected, and

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41. See Appendix O at 105a through 107a.

> the fact that a duty, a common interest, or a confidential relation existed to limited degree is not a defense, even though he acted in good "faith" (At p. 651, 201 S. W. 2d 1019).

It is clear that qualified privilege for business related communications was lost in all of the above instants. The doctrine of *stare decisis* requires that in determining a matter of state law, federal courts are bound to follow the decisions of the highest court of the state as it relates to *Huddleston v. Dwyer*, 322 U.S. 232, 88 L. Ed 1246, 64 S. Ct. 1015 (1944). Accordingly, the Eighth Circuits holding regarding Mr. Bledsoe's claim should be summarily reversed.

3. *The State Law Claims not Addressed by the Eighth Circuit Should Stand be Summarily Reversed for Trial.*

1. *The Hate Offense Claim.* The statement "When I come after you, you will know it" qualifies under Arkansas Law rises to the level of a civil rights offense as it relates to 16-123-105 of the Arkansas Code.

2. *Spoilation of Evidence/Willful Destruction.* Claim based upon the destruction of Mr. Bledsoe's resume by Nucor Yamato Steel Company. *Middleton v. Middleton*, 68 S.W. 2d. 1003, 188 Ark. 1022; Fed. Rules Evid. R. 1004(e) U.S.C.A.

Conclusion

The decisions of the court below collide with this Court's interpretation, State Law and the Arkansas Supreme Court. The error is so obvious and I suggest this is one of those exceptional cases in which summary reversal for discovery and trial are in order. If on the other hand, there might be basis for oral arguments, certiorari should be granted for plenary review of these questions, which are very

important especially equitable tolling.

Respectfully submitted,

Raymon Bledsoe Sr.
710 Johnson Drive
West Memphis, Arkansas 72301
(870)732-0269
Pro Se

January 28, 2002

APPENDIX

APPENDIX A – ORDER GRANTING SUMMARY JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS WESTERN DIVISION DATED OCTOBER 19, 2000 AND ENTERED OCTOBER 23, 2000.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

RAYMON BLEDSOE SR. Plaintiff

v. J-C-99-220

NUCOR YAMATO STEEL CO. Defendant

ORDER

Pending are Defendant's Motion for Summary Judgement (Docket #33) and Plaintiff's Motion to Compel (Docket #32). The parties have responded to the respective motions. For the reasons set forth herein, the Court finds that Defendant's Motion for Summary Judgement should be and hereby is granted. Plaintiff's Motion to Compel is denied as moot.

Facts

Plaintiff filed this suit based upon Title VII of the Civil Rights Act of 1964 for alleged racial discrimination, harassment and retaliation. Plaintiff also presents a claim for the tort of outrage and defamation under Arkansas Law.

Plaintiff was employed by Defendant from June 1992 through July 1998. During his employment Plaintiff was

promoted twice. However, Plaintiff had a history of performance problems including insubordination, sleeping on the job and fighting with co-workers. Specifically, the following performance incidents occurred:

- In August 1994, Plaintiff received a verbal warning for an incident in which Plaintiff cured at a co-worker and threw sand over the co-worker's head.
- Plaintiff was suspended for one day in July 1996 for arguing with and pushing another employee.
- Plaintiff received a verbal warning for sleeping on the job in April 1998.
- Plaintiff received a written warning on May 12, 1998 for insubordination.
- On May 13, 1998 Plaintiff received a written warning for poor work performance.
- During a meeting on May 28, 1998, Plaintiff was warned about numerous work rule violations.
- On June 22, 1998 after a co-employee complained about Plaintiff, Plaintiff was placed on suspension for three days.
- On July 2, 1998 Plaintiff was terminated.

Plaintiff claims that each of these disciplinary actions and his termination represented adverse employment actions.

Following his termination, on August 6, 1998 Plaintiff contacted the EEOC by telephone. The Little Rock EEOC office provided Plaintiff with a charge information form along with a notice entitled "You May File a Charge". On August 24, 1998 Plaintiff Completed the Charge Information Form and returned it to the Little Rock . Plaintiff also signed and returned the "You May File a Charge" form acknowledging

that he had read it. On September 8, 1998 the Memphis EEOC office sent Plaintiff a letter stating that it had received his information and needed to discuss the matter in more detail. On September 15, 1998 Plaintiff spoke with Christine Wilson at the Memphis EEOC office. In this conversation, Wilson discussed Plaintiff's claims and advised him of the 180 day statute of limitation in which to file his charge. On October 27, 1998 Plaintiff sent a letter to the Little Rock EEOC office expressing his dissatisfaction with the interview process with the interview with Ms. Wilson. Plaintiff contends that following this letter he was under the impression that the Little Rock office had reconsidered the information provided on his claim and conducting an investigation. Plaintiff did not take any further action until January 29, 1999, one month following the expiration of the 180 day statute of limitation, when Plaintiff sent another letter to the Little Rock EEOC office requesting information on his claim. On March 8, 1999 Plaintiff filed his Charge of Discrimination with the EEOC.

Standard for Summary Judgement

Summary judgment is appropriate only when there is no genuine issue of material fact, so that the dispute may be decided sole on legal grounds. *Holloway v. Lockhart,* 813 F. 2d 874 (8th Cir. 1987); Fed. R. Civ. P. 56. The Supreme Court has established guidelines to assist trial courts in determining whether this standard has been met:

> The inquiry is the threshold inquiry of determining whether there is a need for trial - whether, in other words, there are genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.

Appendix A

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986) The Eighth Circuit Court of Appeals has cautioned that summary judgement should be invoked carefully so that no person will be improperly deprived of a trial of disputed factual issues. *Inland Oil & Transport Co. v. United States*, 600 F. 2d 725 (8th Cir. 1979), *cert. denied*, 444 U.S. (1979). The Eighth Circuit set out the burden of the parties in connection with a summary judgement motion in *Counts v. Ferguson Co.*, 862 F. 2d 1338 (8th Cir. 1998):

> [T]he burden on the moving party for summary judgement is only to demonstrate, *i.e.*, '[to] point out to the District Court,' that the record does not disclose a genuine dispute on a material fact. It is enough for the movant to bring up the fact that the record does not contain such an issue and to identify that part of the record which bears out his assertion. Once this is done, the burden is discharged, and, if the record in fact bears out the claim that no genuine dispute exists on any material fact, it is then the respondent's burden to set forth affirmative evidence, specific facts, showing that there is a genuine dispute on that issue. If the respondent fails to carry that burden, summary judgment should be granted.

Id. at 1339. (quoting *City of Mt. Pleasant v. Associated Elec. Coop.*, 838 F. 2d 268, 273-274 ()8th Cir. 1988) (citations omitted)(brackets original)). Only disputes over facts that may affect the outcome of the suit under governing law will properly preclude the entry of summary judgment. *Anderson*, 477 U.S. at 248.

Title VII Claims

Under Title VII, an administrative charge must be filed

within 180 days of the alleged discriminatory incident. In order to valid, Title VII requires that "charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the [EEOC] requires. 42 U.S.C.§2000e-5(e)(1). There is no dispute that the last alleged discriminatory act occurred on July 2, 1998. Thus, Plaintiff's Charge of Discrimination was required on of before December 28, 1999. It is also undisputed that Plaintiff did not file his Charge until March 8, 1999.

Plaintiff contends that the doctrine of equitable tolling should apply as the delay in filing his charge was due to the administrative delay of the EEOC and was beyond his control. It is well settled that equitable tolling is premised on the "excusable neglect" of the filing party. *Anderson v. Unisys Corp.*, 47 F. 3d 302, 306 (8th Cir.), *cert. denied,* 516 U.S. 913 (1995). As a general rule, equitable tolling is a remedy reserved for circumstances that a "truly beyond the control of the plaintiff". *Hill v. John Chezik Imports,* 869 F. 2d 1122, 1124 (8th Cir. 1989). Instances in which equitable tolling would be appropriate include: (1) a claimant has received inadequate notice; (2) a motion for appointment of counsel is pending; (3) the court has led the plaintiff to believe that he or she has done everything required of him or her; or (4) affirmative misconduct on the part of a defendant lulled the plaintiff into inaction. *Baldwin County Welcome Ctr. v. Brown,* 466 U.S. 147,151 (1984).

Plaintiff does not contend that he was unaware of his rights. In fact, Plaintiff admits that he was advised of the 180 day statute of limitations deadline. Plaintiff claims that following his October 27, 1998 correspondence, it was his impression that the Little Rock office of the EEOC had

reconsidered the information submitted by Plaintiff and was conducting an investigation. However, the EEOC did not mislead the Plaintiff of give him false information regarding the filing of his Charge of Discrimination. The delay in filing was not due to circumstances beyond Plaintiff's control. Plaintiff was aware of the statutory deadline and failed to file his charge within that time period. Plaintiff cannot now invoke the principle of equity to excuse his lack to diligence. *Id.* For these reasons, the court finds that Plaintiff's claims of racial discrimination, harassment and retaliation under 42 U.S.C. §2000e should be and hereby are dismissed based upon Plaintiff's failure to file an administrative charge as required by 42 U.S.C. §2000e-5(e)(1).

State Law Claims

Plaintiff also seeks relief based upon the state law claim of outrage. In order to succeed on a tort of outrage claim under Arkansas law, a plaintiff must prove that: "1) the defendant intended to inflict emotional distress or knew of should have known that emotional distress was the likely result of his conduct; 2) the conduct was extreme and outrageous, and was utterly intolerable in a civilized community; 3) the defendant's conduct was the cause of the plaintiff's distress; and 4) the plaintiff's emotional distress sustained by the plaintiff was so severe that no reasonable person could be expected to endure it." *Hollomon v. Keadle,* 931 S.W. 2d 413, 415 (Ark. 1996). "By extreme and outrageous conduct, we mean conduct that is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in civilized society." *M.B.M. Co. v.Counce,* 596 S.W. 2d 681, 687 (Ark. 1980). The Arkansas Supreme Court has

noted in a multitude of cases that the tort of outrage is viewed very narrowly in an employment setting. The Court finds that Plaintiff's allegations do not rise to the level of the tort of outrage under Arkansas Law.

Plaintiff's claims of defamation stem from employee write-ups and supervisor comments in the employment setting. The Court finds that the Defendant is entitled to a qualified privilege for business related communications and Plaintiff has not met his burden to prove that this privilege that this privilege has been abused. *Ikani v. Bennett*, 284 Ark. 409, 682 S.W. 2d 747 (1985). In addition, the one year statute of limitations bars Plaintiff's claims relating to verbal statements made in the workplace prior to June 3, 1998. Finally, the words about which Plaintiff complains are not actionable and do not meet the threshold requirement for a defamation action. Thus, summary judgment is proper.

Conclusion

For reasons set forth herein, the Court finds that the Defendant's Motion for Summary Judgement (Docket #33) should be and hereby is granted. Plaintiff's Motion to Compel (Docket #32) is denied as moot.

IT IS SO ORDERED this 19 day of October, 2000.

s/ James Moody
JAMES M. MOODY
UNITED STATES DISTRICT JUDGE

Appendix A

THIS DOCUMENT ENTERED ON
DOCKET SHEET IN COMPLIANCE
WITH RULE 58 AND/OR 79 (a) FRCP
ON 10-23-00 BY s/ TM

APPENDIX B – ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT DATED AND ENTERED AUGUST 30, 2001 AFFIRMING THE DISTRICT COURTS ORDER FOR SUMMARY JUDGEMENT

United States Court of Appeals
For the Eighth Circuit

No. 00-3895EA

Raymon Bledsoe, Sr.,	*	
Appellant,	*	On Appeal from the
	*	United States District
v.	*	Court for the Eastern
	*	District of Arkansas.
Nucor-Yamato Steel Co.	*	
Appellee.	*	[Not To Be Published]

Submitted: July 20, 2001
Filed: August 30, 2001

Before MORRIS SHEPPARD ARNOLD, RICHARD S. ARNOLD, and BYE, Circuit Judges.

PER CURIAM.

Raymon Bledsoe, Sr. filed suit against Nucor-Yamato Steel Company ("Nucor") claiming race discrimination and retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e through 2000e-1, and defamation and outrage under Arkansas law. The District Court granted summary judgement on all of Mr. Bledsoe's claims. He appeals and we affirm.

Appendix B

On July 2, 1999, Mr. Bledsoe's employment with Nucor was terminated. He contacted the Equal Employment Opportunity Commission office in Little Rock, Arkansas. The EEOC sent him a charge information form entitled "You may file a charge." Mr. Bledsoe completed the charge information form and returned it to the Little Rock office. In September, he was contacted by the EEOC office in West Memphis, Arkansas. An EEOC agent informed Mr. Bledsoe that the EEOC would not represent him in his claim, and that he had 180 days from the date of his termination to file and administrative charge. During the following months, Mr. Bledsoe sent two letters to the Little Rock office complaining that his telephone interview with the West Memphis office was inadequate and requesting that the Little Rock office review his claim and render a decision. He did not file a charge before December 29, 1998, the day on which the 180-day time period elapsed. After receiving a right-to-sue letter, Mr. Bledsoe filed this suit against Nucor.

Mr. Bledsoe filed suit, *pro se*, in the District Court alleging race discrimination and retaliation in violation of Title VII. The Court permitted him to file an amended complaint to include state law claims of defamation and outrage. During discovery, he filed four motions for leave to file second a amended complaint, which were all denied by the Court on the basis of either undue prejudice, undue delay, lack of diligence, or futility. Near the close of discovery, he filed a motion to compel, requesting documents from Nucor pertaining to his Title VII claims. Nucor filed a motion for summary judgment. After a full hearing, the Court determined that Mr. Bledsoe's Title VII claims were barred by the 180-day statute of limitations. The Court declined to apply the doctrine of equitable tolling, holding that the delay was

not due to circumstances beyond Mr. Bledsoe's control. Likewise, the Court entered summary judgment on the state law claims, holding that the complained -of behavior did not rise to the level of outrageous conduct required under Arkansas law. Similarly, the Court held that the alleged defamatory statements were either time-barred, privileged, or not actionable. Consequently, the Court held that the motion to compel was moot. This appeal followed.

II.

We review a district court's grant of summary judgment de novo. Hawkeye Nat'l Life Ins. Co. v. AVIS Indus. Corp., 122 F. 3d 490, 496 (8th Cir. 1997). We consider "all facts in light most favorable to the non-moving party and give to the non-moving party the benefit of all reasonable inferences that can be drawn from the facts." Donaho v. FMC Corp., 74 F. 3d 894, 897-98 (8th Cir. 1996) (citation omitted). Summary judgment is proper "where there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law." Gundacker v. Unisys Corp., 151 F. 3d 842, 846 (8th Cir. 1998).

Mr. Bledsoe argues that the Court erred in failing to apply the doctrine of equitable tolling because the EEOC engaged in "positive misconduct" by improperly transferring his claim to the West Memphis office, conducting only a ten-minute telephone interview, not promptly responding to his letters, and initially mailing the right-to-sue letter to an incorrect address. See Debrunner v. Midway Equip. Co., 803 F. 2d 950, 952 (8th Cir. 1986) (holding "[e]quitable tolling arises upon some positive misconduct by the party against whom it asserted"). Thus he argues, the ability to file a timely charge

was out of his hands. We disagree.

Title VII requires a claimant to file an administrative charge with the EEOC within 180 days of the alleged discriminatory conduct. 42 U.S.C. § 2000e-5(1). It is undisputed that Mr. Bledsoe did not file a timely claim. "The filing of a timely charge with the EEOC is a "requirement that, like a statute of limitations, is subject to . . . equitable tolling.' " Shempert v. Harwick, 151 F. 3d 793, 797 (8th Cir. 1998), cert. denied, 525 U.S. 1139 (1999) (citation omitted). However, the doctrine of equitable tolling is a limited one "reserved for circumstances that are truly beyond the control of the plaintiff." Shempert, 151 F. 3d at 798 (internal quotations and citation omitted). The application of the doctrine is appropriate where: "(1) a claimant has received inadequate notice; (2) a motion for appointment of counsel is pending; (3) the court has led the plaintiff to believe that he or she has done everything required of him or her; or (4) affirmative misconduct on the part of a defendant lulled the plaintiff into inaction." Id. (citation omitted).

None of the above circumstances is present in this case. It is undisputed that Mr. Bledsoe understood that he had 180 days to file an administrative charge. See DeBrunner, 803 F. 2d at 952 (holding when "an employee is generally aware of his rights, ignorance of specific legal rights or failure to seek legal advice should not toll the 180-day notification period"). Although it unfortunate that he waited to hear from the EEOC before taking further action, " '[p]rocedural requirements established Congress for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants.'" Shempert, 151 F. 3d at 797 (citation omitted). Further, nothing approaching

affirmative misconduct occurred on the part of the EEOC. Thus, we hold the Court did not err in granting summary judgment on Mr. Bledsoe's Title VII claims.

Moreover, after carefully reviewing the record we also disagree with Mr. Bledsoe's position that the Court erred in granting summary judgment on his state law claims of defamation and outrage. The alleged defamatory statements (unjustified employee write-ups, a supervisor's comment in 1996 to Mr. Bledsoe's wife and family that one of his children did not favor him; a supervisor's statement to a fellow employee that he did not care if Mr. Bledsoe was having sex with the employee's wife, Mr. Bledsoe and the employee were going to get along; inquiries of Mr. Bledsoe during a deposition as to possible past drug use and possession) were either privileged, see Dillard Stores, Inc. v. Felton, 276 Ark. 304, 308, 634 S.W. 2d 135, 137 (1982), beyond the statute of limitations, see Ark. Code Ann. 16-56-104 (Michie 1987) (applying one year statute of limitations to defamation suits), or not actionable.

Likewise, the conduct underlying Mr. Bledsoe's claim of outrage ((1) the supervisor's statement, "when I come after you, you will know it," (2) being forced to work on material hotter than 1200 degrees, (3) a supervisor's statement to a fellow employee that he did not care if Mr. Bledsoe was having sex with the employee's wife, Mr. Bledsoe and the employee were going to get along, and (4) subjection to a psychological interview during the promotional process) was not "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society." M.B.M. Co. v. Counce, 268 Ark. 269, 280, 596 S.W. 2d

681, 687 (1980).

As to Mr. Bledsoe's remaining assignments of error, we hold that it proper to rule the motion to compel moot once the Court had correctly disposed of all to Mr. Bledsoe's claims. Likewise, the Court did not abuse its discretion in denying Mr. Bledsoe's motions for leave to file a second amended complaint.
Accordingly, the judgment is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

APPENDIX C — PETITION FOR REHEARING EN BANC AND PETITION FOR REHEARING BY THE PANEL DATED SEPTEMBER 10, 2001 AND ENTERED SEPTEMBER 11, 2001

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

Raymon Bledsoe, Sr. - Appellant

v 00-3895EA

Nucor-Yamato Steel Company - Appellee

Petition - For Rehearing In Banc

To the Honorable Judges of the United States Court of Appeals for the Eighth Circuit.

Introduction Statement

The argument and matter contained herein were not presented in the previous hearing to the above-entitled Court due to the Courts ruling.

Petition For Rehearing

Pursuant to the provisions of Rule 40 of the Federal Rules of Appellate Procedure, petitioner, Raymon Bledsoe, Sr. - Appellant herein, respectfully petitions the judges of this honorable Court for rehearing of the appeal in the above-entitled cause. In support of this petition, petitioner shows the Court as follows;

1. The cases relied upon in the Courts opinion regarding the matter of equitable tolling in the above-entitled cause do not

speak to the issue of the administrative responsibility of the EEOC.

In Shempert v. Harwick Chemical Corp. 151 F. 3d at 793 (8th Cir. 1998), Shempert had 180 days to file a charge of harassment. She waited until almost 2 weeks before the filing period expired to complete and mail Intake Questionnaire to the EEOC. In addition Shempert had the benefit of counsel for one full month before the filing period expired.

In DeBrunner v. Midway Equipment Co. 803 F. 2d 950 (8th Cir. 1986), DeBrunner had the benefit of EEOC counsel initially but waited 246 days after her termination to file a formal charge. And in each these cases the EEOC responded in a timely manner.

However, Mr. Bledsoe without the benefit of counsel, filed intake questionnaire, talked to EEOC representative at the Memphis, TN. office and mailed certified letter which has not been disputed by appellee-Nucor Yamato Steel nor the Courts, to the Little Rock EEOC office 60 days prior to end to of filing period. The EEOC had the administrative duty to respond to Mr. Bledsoe but did not prior to the deadline. The EEOC's actions were misleading to Mr. Bledsoe causing him to feel that the EEOC office was actually addressing the requests of his letter.

Within the framework of the request, Mr. Bledsoe expressed a desire to seek relief with an attorney of his hiring. An action by which the EEOC as well as this Court knows could have only been accomplished with a Charge of Discrimination issued by the Little Rock or Memphis Offices of the EEOC.

Appendix C

The other primary issue expressed by Mr. Bledsoe was the time frame in which he had to litigate his case. The EEOC was aware of Mr. Bledsoe's desire to litigate this case 60 days prior to the end of the filing period but refused to respond.

Anderson v. Unisys Corp. 47 F. 3d 302, 306 (8th Cir. 1995) which is cited by the Court in Shempert 151 F. 3d at 793 is more akin to Mr. Bledsoe's case where this Court stated that "Other circuits, as well as our own, have held that when an administrative agency misleads a complainant, particularly one who is without the benefit of counsel, equitable tolling may be justified. Citing Warren v. Department of Army, 867 F. 2d. 1156, 1160-61 (8th Cir. 1989)(permitting equitable tolling of the statute of limitations in Title VII action in part because of misleading right to sue letter issued by EEOC); Early v. Banks Life and Casualty Co., 959 F. 2d. 75, 81 (7th Cir. 1992)(citing misleading conduct by the EEOC as a basis for equitable tolling); Bloomberg v. HCA Management Co., 858 F. 2d 642, 644 (5th Cir. 1988)(finding that misleading information from the EEOC may justify equitable tolling) cert. denied, 488 U. S. 1007, 109 S. Ct. 789, 102 L. Ed. 2d 781 (1989) Martinez v. Orr, 738 F. 2d 1107, 1111-12 (10th Cir. 1984) finding equitable tolling appropriate where notice from EEOC mislead pro se claimant regarding the finality of EEOC action).

During the course of this litigation Appellee-Nucor Yamato Steel Company nor the Courts have cited any cases or statutes that support or justify the administrative negligence of the EEOC as it relates to the above-entitled cause therefore the preliminary opinion must be reversed.

2. Mr. Bledsoe feels that the Courts opinion on the remaining

claims in the above-entitled cause were tainted by equitable tolling ruling to the extent that the Court overlooked the fact that Mr. Bledsoe was engaged in protected activity prior to termination by Nucor Yamato Steel Company which is supported by Reginelli v. Martin Industries, Inc., 987 F. Supp. 1137 (8th Cir. 1997), Hagens v. United States Department of Agriculture, 865 F. Supp. 1314 (8th Cir. 1994) as well as cases from other circuits. Mr. Bledsoe has also presented adequate cases and statutes that fully support the remaining claims in this cause, claims which surround the protected activity that Mr. Bledsoe was engaged in prior to termination. Supporting the fact that the summary judgement ruling was also improper.

Suggestion That Case Be Reheard In Banc

Pursuant to the provisions of Rule 35 of the Federal Rules of Appellate Procedure, petitioner respectfully suggests to the judges of this honorable Court that the above-entitled cause is appropriate for consideration on rehearing by all the judges of this Court convened in banc, and in support of this suggestion petitioner shows:

1. The proceeding involves a question of exceptional importance in that the Courts opinion regarding equitable tolling in the above-entitled cause would have a negative impact on similar litigation allowing the EEOC to circumvent the administrative responsibilities delegated to it by Congress.

2. Arkansas like many other states are without the benefit of state or local fair employment agencies and the EEOC serves as the only recourse for actions of discrimination as it relates to Title VII of the Civil Rights Act. The Courts opinion

regarding equitable tolling would relieve the EEOC of its administrative responsibilities opening to the door to other possible abuses. Such abuses speak to the Public Interest and must therefore be reversed.

3. The summary judgement ruling is a question of exceptional importance since the Eighth Circuit citing Windsor v. Bethesda General Hospital, 523 F. 2d 891 stating "in civil rights actions, pleadings are to be liberally construed" which is consistent with other circuits which have dismissed and vacated employers motion to dismiss. The Eighth Circuit has noted that summary judgement is a extreme remedy citing Robert Johnson Grain Co. v. Chemical Interchange Company, 541 F. 2d 207. The question to this Court is whether summary judgement is proper in light of documentation by Mr. Bledsoe, containing personal work related diary notes and certified letters to Appellee-Nucor Yamato Steel Company prior to Mr. Bledsoe's termination that speak to as well inference racial discrimination by Appellee-Nucor Yamato Steel Company.

4. The remaining claims of above-entitled cause have merit. Each claim should be addressed on an individual basis by this Court therefore the preliminary opinion must be reversed.

Wherefore, petitioner respectfully requests:

1. That a rehearing of the appeal in above-entitled cause be granted; and

2. That the honorable judges of this Court order that the above-entitled cause be heard by the court in banc allowing oral arguments.

Appendix C

September 10, 2001

s/ Raymon Bledsoe
710 Johnson Drive
West Memphis, AR. 72301
(870)732-0269

Certificate

I hereby certify that the fore going petition for rehearing is presented in good faith and not for delay.

s/ Raymon Bledsoe
710 Johnson Drive
West Memphis, AR. 72301
Pro Se

APPENDIX D– ORDER DENYING PETITION FOR REHEARING EN BANC DATED AND ENTERED OCTOBER 30, 2001.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 00-3895

Raymon Bledsoe, Sr.	.	
Appellant,	.	
	.	Order Denying Petition
	.	for Rehearing and for
vs.	.	Rehearing En Banc
	.	
Nucor-Yamato Steel Co.,	.	
Appellee	.	

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.
(5128-010199)

October 30, 2001

Order Entered at the Direction of the Court:
s/ MICHAEL E. GANS
CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT

APPENDIX E – STATEMENT OF THE BASIS OF JURISDICTION

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF ARKANSAS – JONESBORO, ARKANSAS

Cause - 42:2000e Job Discrimination (Employment) - Federal Question

Relevant Facts - The Plaintiff, Raymon Bledsoe Sr., is resident of Crittenden County of the Eastern District of Arkansas and Nucor-Yamato Steel Company is a foreign corporation with it principle place of business in Mississippi County of the Eastern District of Arkansas.

Raymon Bledsoe Sr. was employed by Nucor-Yamato Steel Company for 6 (six) years when he was discriminated against and terminated for engaging in protected activity as it relates to *Eva v. Kansas City School Dist,* 65 F. 3d 98, 100 (8th Cir. 1995) certi. denied 517 U. S. 1104, 116 S. Ct. 1319, 134 L. Ed 2d 472 (1996). An employer may not discriminate against an employee because the employee "has opposed any practice made unlawful employment practice, 42 U. S. C. A. 2000e-3(a).

Raymon Bledsoe Sr. filed charge of discrimination against Nucor-Yamato Steel Company with the EEOC on March 8, 1999 and filed complaint against Nucor-Yamato Steel Company on June 3, 1999.

Plaintiff reserved all rights under any motions filed previously concerning jurisdiction and transfer in First Amended Complaint.

The District Court has jurisdiction over this cause of action

Appendix E

and the parties hereto, and venue is proper.

UNITED STATES COURT OF APPEAL FOR THE EIGHTH CIRCUIT

Cause 42 :2000e - Job discrimination and employment

Relevant Facts - The U. S. District Court for the Eastern District of Arkansas granted summary judgement order for Defendant Nucor-Yamato Steel Company on October 23, 2000.

U. S. District Court for Eastern District of Arkansas is within the Eight District Court of Appeals jurisdiction.

An appeal of the U. S. District Courts Order granting summary judgement for Nucor-Yamato Steel Company was appealed by Mr. Bledsoe from the U. S. District Court by Mr. Bledsoe on November 21, 2000 establishing jurisdiction in the Eighth Circuit Court of Appeals.

UNITED STATES SUPREME COURT

The judgement of the United State Court of Appeals for the Eighth Circuit was entered on August 30, 2001. The United States Court of Appeals for the Eighth Circuit denied a timely petition for rehearing in an Order dated October 30, 2001.

This Petition is filed within ninety days of the United States Court of Appeals for the Eighth Circuit's denial of rehearing and therefore, this Honorable Court has jurisdiction of this Petition by virtue of 28 U. S. C. § 1254(1).

APPENDIX F – 42 U.S.C.A. § 2000e-5(e) and (f)

(e) Time for filing charges; time for service of notice on respondent; filing of charge by Commission with State or local agency; seniority system

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue on United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

APPENDIX G – JUNE 29, 1998 LETTER FROM RAYMON BLEDSOE SR. REQUESTING EXERCISE OF FINAL STEP OF NUCOR YAMATO STEEL'S COMPANY COMPLAINT PROCEDURE RECEIVED ON JUNE 30, 1998.

Raymon Bledsoe
710 Johnson Dr.
West Memphis, AR. 72301

June 29, 1998

Mr. Mike Gurley, Melt Shop Supervisor
Nucor-Yamato Steel
P. O. Box 1228
Blythville, AR. 72316

RE; 6/26/98 and 6/27/98 Suspension and Notice.

Mike Gurley
This letter is in reference to the above stated notice and suspension. In this letter I was suspended with the lost of production bonus primarily on the basis of allegations made by Albert Dyer which amount to hearsay.

When you approached me on 6/22/98 regarding this matter, you stated that Albert, Jess Garner, you and myself would meet on 6/26/98 to further discuss the matter. In a meeting with Jess Garner a few minutes later, he also indicated that the four of us would meet. Mr. Garner came to our work area on the morning of 6/26/98 and made the same statement again. But when Mr. Garner came over that afternoon to get me for the meeting we passed by Albert on our way to your office. Why wasn't Albert asked to come to the meeting in order to support the allegations made by you and Mr.

Appendix G

Garner?

You made reference in your notice and the meeting that I had a problem with "suggested direction from a fellow employee with more job experience". As it relates to Albert, I respect him for the time that he has been in refractory but when he violates practices taught to me by him and practices known to the rest of refractory and the ladle wall, for safety reasons to the men on the caster and the productivity of Nucor-Yamato Steel I have the responsibility as an employee of this mill to inform [redacted] and anyone else of possible problems.

This is not only based upon my 1.5 years of experience in refractory as a "bricker" but is also based upon my 4.5 years of experience on the furnaces where I have seen ladles wash through the sides while a heat was being tapped into it. Fortunately they didn't wash out on the caster. Mike, I have 6 years of compiled experience that allows me to view areas in refractory in a much broader since than Albert. Albert has a personal problem with that position to the extent that he becomes very upset when questioned.

On 6/21/98 when he bricked a whole ladle by himself, he bricked it without the required stands that were in the ladle that I was in. The one Mike that you guys could not agree on which had priority. Due to the fact that he had no stands, Albert left a bare spot on the slag line at 12 o'clock approx. 3 ft. from the top. He bricked over this spot without putting the necessary amount of ladle-vibe behind the brick.

This situation is so out of hand that I was afraid to say anything about it due to his temper when advised.

Appendix G

In my letter to Nucor dated 6/15/98, I indicated in paragraph three of page two that "the tundish was hot when I cleaned it out and set the plates". I worked on this tundish by myself. Albert was not working on a ladle but sitting down. I am often put in this position in order to make sure that we have adequate tundishes and ladles. I have worked alone many times as Albert used company time to council members of his church. I bricked a ladle alone 3 weeks ago.

As for as sleeping on the job is concerned. Mr. Garner told us in one of our morning meetings that it was beneficial in taking a short nap. But several other people have also been reprimanded for sleeping on the job within the past weeks.

As to the counceling sessions referred to in your notice, the first two were spent basically trying to find out what our priorities are and the equal distribution on work which are made reference to in my 4/27/98 letter to Nucor. As for my session with Dan on 5/18/98, his suggestion was to not let Glenn Browns actions affect my work.

As to your reference to an inaccurate statement regarding my meeting with Dan on 5/18/98. I requested a meeting with Dan on 4/2798 and did not get that meeting with Dan until 5/18/98 which was twenty-two days later. The insubordination charge was 5/12/98 six days before I talked to Dan. I hope that there is no more confusion regarding this.

Mike I have been written up for the same incidents twice. Conduct/insubordination 5/12 and again by you on 6/26. Work performance/tundish plates 5/13 and again by you on 6/26. Work performance/sleeping 4/18 and by you again on 6/26. I believe that this is excessive Mike.

Appendix G

I believe that the real reason for the suspension was my questioning management in areas such as the harassment of employees by Glenn Brown and the lack of written guidelines so that priorities and goals can be set for all the people in refractory. I have requested a computer for refractory so that not only would our record keeping be more accurate but so that we might have some accountability which is what you emphasized in your first safety meeting with our crew.

This is not the same Nucor-Yamato Steel that I began employment six years ago when we struggling to make the million plus tons a year. Every aspect of this operation was open for constructive criticism. Mike, I have been apart of two furnace records on number one furnace that have proven to the rest of the crews that those once imagined goals could be met in tap to tap. I have offered ideas that have and could make our work in refractory a lot easier.

As I mentioned to you and Jess on 6/26/98, I overcame the racist remark that John Bell made in reference to me being hired as a quota in order to fulfill the minority mandate of the federal government prior to hiring me as utility man on the furnaces.

I overcame Donnie Crums open insult of my wife and children in their presence as I tried to introduce him to them. I worked for Donnie for 4.5 years.

I am working for Jess Garner who has been called a racist by one of our fellow employees. While I have my concerns also, I have tried to give Jess the benefit of a doubt.

You spent much of your time in our safety meeting stating

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that you are not the same person that you were 10 years ago. While I have my concerns I have also given you the benefit of a doubt because I have seen Mike Gurley in a neutral environment. I encouraged you to seek the job as melt shop manager.

As a member of the IS0 9002 team I volunteered my experience in quality control and my time to make sure that Nucor-Yamato remains the leader in the industry.

Mike I have overlooked and accepted a lot of garbage since my employment at Nucor but as I stated to you and Jess, I demand my respect as citizen of this great country that we live in and as an employee of Nucor-Yamato Steel.

I have given Nucor-Yamato my best for the past six years and after three weeks on the job you say that it is not good enough. I am not employed by Nucor-Yamato to make every bodies day a happy one although I try. I am hired by this company to brick tundishes and ladles and brick them safely.

This situation has gotten out of hand and it has began to affect me physically as well as mentally.

I am requesting that I exercise the final step of our open door policy by informing our cooperate offices of this matter.

Respectfully,
s/ Raymon Bledsoe
Raymon Bledsoe
cc. Rlb.

Certified Letter #280 309 912

APPENDIX H – OCTOBER 27, 1998 LETTER TO THE LITTLE ROCK EEOC OFFICE REQUESTING FINALITY AND RECONSIDERATION FILE STAMPED BY THE EEOC ON OCTOBER 28, 1998.

Raymon Bledsoe Sr.
710 Johnson Drive
West Memphis, AR. 72301

October 27, 1998

Equal Employment Opportunity Commission
Little Rock Area Office
425 W. Capital, Suite 625
Little Rock, AR. 72201

Dear Representive

This letter is in reference to my dismissal from Nucor-Yamato Steel of Blythville, AR., as well as the telephoned conversation with Ms. Christine Wilson on September 15, 1998 at approx. 10:00 a.m.

I requested the necessary forms from your office via telephone on August 6, 1998 for to complete for information regarding my dismissal.

I received those forms. I completed the forms and I also enclosed certified documents that I feel add more support to my claims.

Ms. Wilson from your Memphis Office responded in writing requesting the opportunity to discuss my situation in more detailed letter dated September 8, 1998.

Appendix H

I attempted to contact Ms. Wilson on September 14 and successfully contacted here via phone on Sept. 15.

My more detailed discussion of my situation resulted in a conversation which lasted less than ten (10) minutes when she concluded that I had no grounds for filing a charge with EEOC.

This not an effort to defame Ms. Wilson and or her qualifications as an investigative support assistant. I feel that the information that I submitted to your office carried more weight and more validity than our brief conversation exposed.

In your pamphlet entitled The Charging Party, Your Rights and Responsibilities on page one (1) THE LAWS it states:

Title VII Prohibits——

Discrimination because of race, color religion, sex or national origin. All employment practices are affected, including hiring, firing, layoffs, promotions, wages, training, disciplinary action and other terms, privileges, conditions of benefits of employment.

The information submitted to your office along with the copies of certified documents lend overwhelming support to the affected employment practices of hiring, firing and disciplinary action.

I was employed with Nucor-Yamato Steel for a period of six (6) years commuting 145 mile per day with a excellent work record. There is no support for my termination other than a

new melt shop manager wanting to make an example by firing me.

Since my conversation with Ms. Wilson, I have not received any documentation from your office or her Memphis Office regarding your findings and or my rights to seek relief with an attorney of my hiring and the time frame in which I have to litigate this case.

It is my hopes that your office would review the information submitted to you and render a decision. Thank you for your time and patience.

Respectfully,
s/ Raymon Bledsoe Sr.
Raymon Bledsoe Sr.

APPENDIX I – JANUARY 29, 1999 LETTER TO THE LITTLE ROCK EEOC RECEIVED FEBRUARY 1, 1999 REFERENCING THE OCTOBER 27, 1998 LETTER TO THE EEOC.

Raymon Bledsoe Sr.
710 Johnson Drive
West Memphis, AR. 72301
Home 870-732-0269
Mobile 870-243-3306
Pager 800-338-4839 pin 1042

January 29, 1999

Equal Employment Opportunity Commission
Little Rock Area Office
425 West Capital Office, Suite 625
Little Rock, AR. 72201

RE: Request for confirmation
To Whom It May Concern

I mailed a letter to your office dated October 27, 1998. A copy of that letter has been enclosed. In that letter, I requested another review of my allegations against Nucor-Yamato Steel of Blythville, Arkansas.

I have not received any information from the Memphis nor the Little Rock Area Offices indicating acceptance or denial of my claims. As you know, the element of time is of great importance to me if I am able to seek my own counsel and file a suit against the above stated company.

I am requesting a letter of confirmation of the enclosed letter.

Appendix I

Respectfully,
s/ Raymon Bledsoe
Raymon Bledsoe

Certified Mail # Z 490 626 675